

SEP 13 2001

RECORDING REQUESTED BY:

City of Pasadena
100 North Garfield Avenue
Pasadena, California 91101
Attn: Real Property Manager

WHEN RECORDED, MAIL TO:

Dept. of Toxic Substances Control, Region 3
1011 North Grandview Avenue
Glendale, California 91201
Attn: Sayareh Amirebrahimi, Chief
Southern California Cleanup Operations

COPY of Document Recorded
01-1728764

Has not been compared with original.
Original will be returned when
processing has been completed.
LOS ANGELES COUNTY REGISTRAR - RECORDER/COUNTY CLERK

SPACE ABOVE THIS LINE RESERVED
FOR RECORDER'S USE

AGREEMENT NO. 17,718
COVENANT TO RESTRICT USE OF PROPERTY
(Health and Safety Code section 25355.5)

ENVIRONMENTAL RESTRICTION
(Civil Code section 1471)

For Property at:

175 South Kinneboa Avenue
Pasadena, California

Los Angeles County Assessor's Parcel No.: 5754-008-905

This instrument filed for record
as an accommodation only. It has not
been examined as to its execution
or as to its effect upon the title.

This Covenant and Agreement ("Covenant") is made by and between the City of Pasadena, a body corporate and politic (the "Covenantor"), the current owner of property situated in Pasadena, County of Los Angeles, State of California, described in Exhibit "A", and depicted in Exhibit "B", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471 (c) the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that pursuant to Civil Code section 1471 and H&SC sections 25355.5 and 25222.1 that the use of the Property be restricted as set forth in this Covenant and that this Covenant shall run with the land.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 1.3 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by a vacant commercial lot beneath power transmissions lines with frontage on Colorado Boulevard on the north, a nursery on Kinneloa Avenue also beneath transmission lines on the east, a social service facility (group home) also on Kinneloa Avenue to the south and a concrete lined flood control channel on the west, County of Los Angeles, State of California. This property is more specifically described as Los Angeles County Assessor's Parcel No.: 5754-008-905.

1.02 The Preliminary Endangerment Assessment (PEA), under the oversight of the Department provides that a deed restriction be required as the site remediation. The PEA identifies arsenic, cadmium, chromium, copper, lead, mercury, nickel, polycyclic aromatic hydrocarbons (PAHs), acetone, benzene, toluene, diethylphthalate, and di-n-butylphthalate, which are hazardous substances as defined in H&SC section 25316, and are hazardous materials as defined in H&SC section 25260, remain at elevated levels throughout surface and fill materials to depths of 35 feet below ground surface (bgs) of the Property. The Department on January 23, 2001 conditionally approved the PEA, pending the recording of this Deed Restriction on the Property with the County of Los Angeles, as detailed in the Final Preliminary Endangerment Assessment prepared by Ecology and Environment, Inc., as approved by the Department, and in previous investigations done onsite, hazardous materials and hazardous substances, as defined in H&SC sections 25316, are found onsite. These include the following contaminants of concern:

At depths of 0 to 5 feet bgs; benzo(a)pyrene at 0.79 parts per million (ppm), benzo(b)fluoranthene at 1.3 ppm, benzo(k)fluoranthene at 0.49 ppm, dibenz(a,h)anthracene at 0.51 ppm, indeno(1,2,3cd)pyrene at 1.2 ppm, cadmium at 1.5 ppm, benzene at micrograms per cubed meter ($\mu\text{g}/\text{m}^3$), and toluene at 120 $\mu\text{g}/\text{m}^3$.

At depths of 10 to 24 feet bgs; arsenic at 75 parts ppm, chromium at 130 ppm, copper at 9,390 ppm, lead at 2,040 ppm, mercury at 15 ppm, nickel 170 ppm, diethylphthalate at 25.8 ppm, di-n-butylphthalate at 6.7 ppm, and acetone at 1,000 $\mu\text{g}/\text{m}^3$.

Further, these contaminants may pose a threat to human health under a residential setting. Based on the Final Preliminary Endangerment Assessment the Department concluded that use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department further concluded that the Property, subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if use is limited to commercial and industrial use or a parking lot.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC sections 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds, Leases and Subleases. From and after the date of recordation of this Covenant, the Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property. Further, each Owner or Occupant shall include in any instrument conveying any interest in all or any portion of the Property, including but not limited to deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTION AND COVENANT TO RESTRICT USE OF PROPERTY, RECORDED IN THE PUBLIC LAND RECORDS ON __[DATE]__, IN BOOK ____, PAGE ____, IN FAVOR OF AND ENFORCEABLE BY THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV **RESTRICTIONS**

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without an appropriate Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property soils.

4.03. Access for Department. The Department and its designees shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner *modify or remove* any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever. Further, nothing set forth in this Covenant shall be construed to effect a taking under federal or state law.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Los Angeles within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: City of Pasadena
100 North Garfield Avenue, Room 222
Pasadena, CA 91109
Attn: Real Property Manager

To Department: Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201
Attn: Sayareh Amirebrahimi

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: City of Pasadena

By: Cynthia J. Kurtz
Title: Cynthia J. Kurtz, City Manager

Attest: Jane L. Rodriguez
Jane Rodriguez, City Clerk

Approved as to form:

Michele B. Bagneris
Michele B. Bagneris, City Attorney

Date: 8/3/2001

Department of Toxic Substances Control

By: Sayareh Amirebrahimi
Title: Sayareh Amirebrahimi, Chief
Southern California Cleanup Operations – Glendale Office

Date: 09/04/01

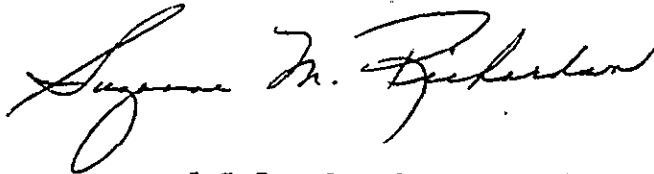
State of California

County of Los Angeles

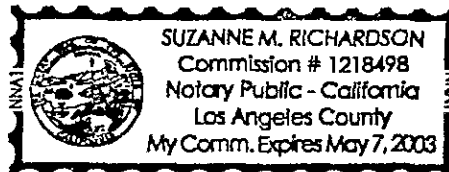
On July 30, 2001, before me, a Notary Public, personally appeared Cynthia J. Kurtz, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature



(seal)



STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On this 4 day of Sept in the year 2001, before me
Caterina Solomon personally appeared
Sayateh Amirebrahimi personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Caterina Solomon

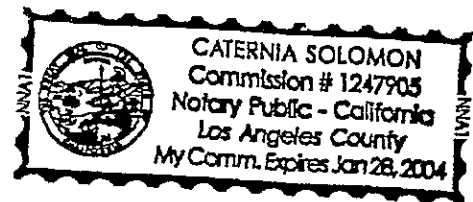


EXHIBIT "A"

Legal Description
of a Portion of Lot 2 of Block 4 of Sunny Slope Estate,
Located West of Kinneloa Avenue,
355 Ft. \pm South of Green Street

That portion of Lot 2, Block 4 of Subdivision No. 2 of Sunny Slope Estate in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 54, pages 91 and 92 of Miscellaneous Records in the office of the County Recorder of said county, more particularly, as a whole, described as follows:

Commencing at the intersection of the center line of Green Street, a city street, 50.00 feet in width with the center line of Kinneloa Avenue, a city street 60.00 feet in width, both streets being shown on map of Track No. 10478 in said City, County and State, as per map recorded in Book 162, pages 13 and 14 of Maps in the office of the County Recorder of said County; said point of intersection is established and marked by a 2.5 inches brass cap monument marked "County Surveyor - R.E. 63", located 8 inches down in a hand well, per Los Angeles County Engineers Field Book No. 1602, page 21; thence southerly along said center line South $0^{\circ} 53' 28''$ West, 235.51 feet to the northerly line of Lot 2, Block 4 of the subdivision No. 2 of Sunny Slope Estate, as described hereinabove; thence continuing southerly along said center line South $0^{\circ} 53' 28''$ West, a distance of 89.60 feet; thence southeasterly along the northwesterly prolongation of the center line of said Kinneloa Avenue South $32^{\circ} 36' 23''$ East, 29.98 feet and leaving said center line, South $66^{\circ} 49' 08''$ West, 22.23 feet to intersect the curved westerly line of said Kinneloa Avenue, concaving to the northeast, having a radius of 301.87 feet; said point being the Point of Beginning for this legal description; thence continuing along the northerly line of this legal description, South $66^{\circ} 49' 08''$ West, 28.75 feet and North $83^{\circ} 46' 37''$ West, 131.16 feet to the northeasterly line of Los Angeles County

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Flood Control Channel, known as Eaton Wash 100.00 feet in width; thence along the northeasterly line of said channel, South $31^{\circ} 02' 16''$ East of distance of 446.39 feet and leaving said northeasterly line, North $57^{\circ} 23' 37''$ East, 138.68 feet to the southwesterly line of said Kinneloa Avenue, 52.00 feet in width; thence northwesterly along said southwesterly line, North $32^{\circ} 36' 23''$ West, a distance of 309.84 feet to the beginning of a tangent curve, concave northeasterly, having a radius of 301.87 feet; thence northwesterly along said curve, through a central angle of $9^{\circ} 25' 31''$, an arc length of 49.66 feet to the Point of Beginning.

Area: 52,977 S.F.
1.216 \pm AC.

The above described property also is shown on City of Pasadena, Public Works and Transportation Department Drawing No. 5165 on file in the office of said Public Works and Transportation Department of said City Pasadena.

EXHIBIT "B"

